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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of	)	
	)	MM Docket No. 97-179
Amendment of Section 73.202(b)	)	RM-9064
Table of Allotments	)	
FM Broadcast Stations	)	
(Old Forge and Newport Village, New York)	)	

INITIAL COMMENTS OF PETITIONER AND PETITION FOR ALLOTMENT OF CHANNEL 223A TO OLD FORGE, NEW YORK

21st Century Radio Ventures, Inc., permittee of 940203MC, Old Forge, New York, Channel 259A ("Petitioner") hereby files its initial comments in the above referenced proceeding and seeks the allotment of Channel 223A at Old Forge, New York.

On August 6, 1997, the Commission issued a Notice of Proposed Rule Making ("NPRM") in the above referenced proceeding. In the NPRM the Commission solicited certain additional information concerning Petitioner's proposal to reallot Channel 259A from Old Forge to Newport Village, New York and the modification of Petitioner's construction permit accordingly.

In the NPRM, the Commission identified a white and gray area of approximately 59 square miles with 229 people in it that would be created by removal of Channel 259A from Old Forge to Newport Village. As set forth herein, by using the more accurate block centroid retrieval method to perform the population calculation instead of the uniform distribution method employed by the Commission it can be conclusively determined that the white and gray area is unpopulated and there will therefore not be any theoretical loss of service to anyone in a white or gray area as the result of the proposed deletion of

channel 259A at Old Forge. In addition, under existing Commission precedent the purported loss is considered de minimis. Further, Petitioner's specific transmitter site made possible the coverage into the white and gray area. Petitioner's landlord now refuses to locate Petitioner's FM station at its site due to changed circumstances. As a result, Petitioner must find a new site and there cannot be any guarantee that it will be able to serve both its community of license and the white and gray area from the new site. Finally, Petitioner seeks herein to add an additional allotment to Old Forge of channel 223A and, if channel 223A is allocated, will apply for it and operate it so as to ensure a second service into Old Forge after Petitioner moves to Newport Village (the two stations would be channel 223A and channel 231A which is currently allocated with an application pending). Petitioner hereby pledges to use good faith efforts to locate its transmitter site for channel 223A so as to serve both the Old Forge community and the white and gray area.

The Commission also indicated that Petitioner's channel 259A represents the sole local potential service for Old Forge. In fact, channel 231A has been allocated at OId Forge and applied for. Under applicable Commission precedent, allocated and applied for stations are counted for purposes of determining the number of stations serving a community.

I. Service to White and Gray Area

In the NPRM, the Commission noted that its engineering study revealed that the deletion of channel 259A from Old Forge will result in a creation of both a white and gray

area with a population of 229 people.

A. Use of the Population Centroid Method of Population Estimation Establishes that the White and Gray Area is Unpopulated

There are at least two methods to determine the population within a white and gray area. The older, less accurate, method is the uniform distribution method where population is assumed to be evenly distributed within a census area (see 73.525(e)(6)(2)(ii) of the Commission's rules).

By contrast, the block centroid retrieval methodology reflects the fact that population is not usually evenly distributed and that it tends to gather in blocks, such as in towns or villages. The effect is magnified in sparsely populated areas where there may be small isolated settlements separated by large areas of unpopulated open space. The block centroid method is therefore considered to be a more accurate measure of population throughout an area than the uniform distribution method . See Letter from Chief, Audio Services Division to Larry H. Will, October 9, 1992 (ref. 1800B3-ESR). The FCC noted in a recent Report and Order in the Grandfathered Short-Spaced FM Stations proceeding that "because the Census Bureau recognizes the Block Centroid Method as a more accurate calculation method, we will also accept this method." Report and Order, in Docket 96-120, p. 6, para. 5 (released August 8, 1997).

The attached engineering statement of duTreil, Lundin & Rackley examines the white and gray area using the block centroid retrieval methodology. Using this more accurate methodology reveals that the white and gray area is unpopulated. As a result, the deletion of channel 259A at Old Forge will not result in the loss of service to even one

person in the white or gray area.

B. Alleged Loss of Service Is Theoretical and De Minimis

Even if the Commission chooses to analyze the white and gray areas using the older uniform distribution method, the alleged loss of service is only theoretical. Channel 259A has never been on the air and it "does not present the parallel concerns with loss of service represented by the removal of an operating station, as it does not constitute a service that the public has become reliant upon." Avra Valley, Comobabi, Florence, Oracle, Oro Valley and San Carlo, Arizona, 12 FCC Rcd 1202, 1206 (1997).

Petitioner's proposal will increase service to 168,889 persons. In light of this large gain, the theoretical loss of service to 229 persons in a 59 square kilometer white and gray area is de minimis. This determination is upheld by Commission precedent. For example, in Seabrook, Huntsville, Bryan, Victoria, Kenedy and George West, Texas, Memorandum Opinion and Order, in docket 91-180 (released August 29, 1996), the Commission determined that the loss of service to 455 people in a 61 square kilometer gray area was de minimis in light of the value of an additional service to 256,984 people.

C. Petitioner Lost Its Transmitter Site at Old Forge and There Is No Guarantee that Any Other Available Site Will Permit Petitioner to Serve Both Old Forge and the White and Gray Area

As set forth in the attached letter from Chain Lakes Cablevision (attached hereto as Exhibit 1), the site owner will not permit operation of Petitioner's FM station at its site. This resulted from a change in circumstances at the site beyond the control of Petitioner. Petitioner must now find a new site.

As noted in the NPRM, there can be no guarantees that operation from other sites will serve the white and gray areas. The Commission should therefore consider that it is unclear if there are any available communications sites in the area from which the white and gray area may be served while at the same time serving Old Forge. Communications sites are severely restricted in the area because the entire area is part of the environmentally sensitive Adirondack Park area. As a result, only a few sites are available, most of which do not effectively serve the white and gray area.

D. Request for Allotment of Channel 223A At Old Forge, New York

Petitioner wishes to construct a channel at Old Forge so as to ensure maximum service to the public provided that Petitioner is permitted to delete its channel at Old Forge and move to Newport Village. Therefore, Petitioner requests the amendment of Section 73.202(b) of the Commission's rules to add channel 223A to Old Forge, New York. In support thereof, attached hereto as Exhibit B is a mileage separation study showing that Channel 223A can be allotted to Old Forge consistent with the Commission's minimum distance separation requirements (Section 73.207 of the Commission's Rules).

If the Commission allots channel 223A to Old Forge, Petitioner will tender for filing an application seeking authority to construct the facility. If Petitioner is granted such authority, it will expeditiously move to construct the Station. In addition, Petitioner will use reasonable best efforts to serve the white and gray areas that are created by its deletion of channel 259A from Old Forge.

In Llano and Marble Falls, Texas, 12 FCC Rcd 6809 (1997), the Commission granted a change in city of license of Channel 285C3 from Llano to Marble Falls. Channel

285C3 was the only station allocated to Llano and the Commission premised its decision to change city of license on the fact that the licensee of the station moving to Marble Falls had proposed allocation of a new station at Llano coupled with a pledge to file an application to construct the station at Llano and if authorized promptly construct the station. The new allocation at Llano alleviated concerns expressed by the Commission that the sole local service was being removed from the market and the Commission therefore granted the change in city of license and opened a filing window for the new channel at Llano. Petitioner believes that its case is similarly situated and the Commission should move to take the same action, namely grant the change in city of license for channel 259A from Old Forge to Newport Village and open a filing window for channel 223A.

II. Channel 259A Does Not Represent the Sole Local Service to Old Forge

The Commission indicated that Petitioner's channel 259A represents the sole local potential service for Old Forge. In fact, channel 231A has been allocated at OId Forge and applied for (as noted in the NPRM, channel 231A was allotted to Old Forge and an application has been accepted as tendered for filing 961212MF).

Under applicable Commission precedent, allocated and applied for stations are counted for purposes of determining the number of stations serving a community. See, e.g., Greenup, Kentucky and Athens, Ohio, 6 FCC Rcd 1493 (1991) ("potential service from existing allotments should be considered in examining claimed coverage preferences " in allocation proceedings, citing Roanoke Rapids).

As a result, channel 231A and channel 223A (once allocated) must be counted as potential service. Old Forge therefore currently has two potential stations to provide local service and, after grant of the city of license change of channel 259A from Old Forge to Newport Village and the allocation of channel 223A to Old Forge, will continue to have two potential services.

III. Commitment to Apply and Construct

Petitioner hereby restates its intention to apply for channel 231A if it is realloted to Newport Village and, if authorized, to build the station promptly if allotted.

IV. Conclusion

As set forth more fully in Petitioner's Petition for Rule Making and in the NPRM, a preferential arrangement of allotments will result from Petitioner's proposal. There are no inhabitants in the theoretical white and gray areas and therefore there will not be a loss of service to anyone from a grant of the instant petition. An additional service will be provided, however, to 168,889 persons. Petitioner has proposed allocation of an additional channel at Old Forge so that the community will continue to have two stations for potential local service.

The foregoing is true and correct to the best of my knowledge and belief and is

executed under penalty of perjury.

Respectfully submitted,

21st Century Radio Ventures, Inc.

By:_____ Date: 10/4/97
James L. Primm

James L. Primm
President and Counsel
21st Century Radio Ventures, Inc.
530 Wilshire Blvd. suite 301
Santa Monica, CA 90401
310-393-2741

EXHIBIT 1

Chain Lakes Cablevision

10 South Franklin Turnpike
Ramsey, NJ 07446
201-825-9090 phone
201-825-8794

June 23, 1997

21st Century Radio Ventures, Inc.
ATTN: James Primm
530 Wilshire Blvd., Suite 301
Santa Monica, CA 90401

Subject: Old Forge, New York Tower Site

Dear Jim:

After conversation with our technical engineer Al Szablak combined with careful review of the correspondence, I believe the site we have would not be suitable for this venture. We decided last October to prohibit broadcast activity at the site. We regret that we did not inform you at that time and hope this does not cause you any problems. We all agree that McCauley Mountain, or a site at a minimum of three (3) miles from the headend site, would be best for all.

Sincerely,

Sean Feeney
Business Development

SF:mmv

EXHIBIT 2

Post-it® Fax Note 7671	Date	# of pages ▶ 1
To J. PRIMM	From J. REYNOLDS	
Co./Dept.	Co.	
Phone #	Phone #	
Fax #	Fax #	

duTreil, Lundin & Rackley, Inc.
A Subsidiary of A.D. Ring, P.A.
Sarasota, FL

Page: 1
10/02/97

FM SEPARATION STUDY

Job Title :Ch 223A - Old Forge RP

Separation Buffer 32 km
FCC DB Date : 09/29/97

Channel 223A (92.5 MHz)

Coordinates : 43-39-35 75-03-29

Call Status	City State	FCC File No.	Channel Freq.	ERP(kW) HAAT(m)	Latitude Longitude	Bearing deg-Tru	Dist. (km)	Req. (km)
W220BO	Lowville		220D	.006	43-48-30	294.5	40.13	0
CP	NY	BPFT960617TA	91.9	195.0	75-30-43		.00	TRANS
Translator For WMHR, Syracuse, NY- From Channel 240								
WRVN	Utica		220A	1.85	43-08-31	193.4	59.13	31
APP	NY	BPED970611MC	91.9	-29.0	75-13-36	SS	28.13	CLEAR
WSENFM	Baldwinsville		221B1	25.0	43-10-46	243.1	116.64	48
LIC	NY	BMLH880615KB	92.1	91.0	76-20-19		68.64	CLEAR
Specially Negotiated Short-Spaced Allocation with respect to Canada								
WFLY	Troy		222B	17.0	42-38-16	142.5	142.55	113
LIC	NY	BLH871015KA	92.3	259.0	73-59-55		29.55	CLEAR
WKGBFM	Susquehanna		223A		42-03-10	196.6	186.12	115
PDEL	PA	RM9111	92.5	.0	75-42-07		71.12	CLEAR
WBEEFM	Rochester		223B	50.	43-10-37	255.5	203.15	178
LIC	NY	BMLH900220KF	92.5	152.0	77-28-39		25.15	CLEAR
Grandfathered at 50KW @ 152 Meters HAAT								
CFQRFM	Montreal		223C1	41.	45-30-20	29.0	235.85	243
	QU		92.5	299.0	73-35-32		-7.15	SHORT
SPECIAL NEGOTIATED SHORT-SPACED ALLOCATION.								
WXUR	Herkimer		224A	3.00	43-03-50	178.0	66.25	72
LIC	NY	BLH790418AA	92.7	91.0	75-01-44		-5.75	SHORT
Class B1 with respect to Canada								
CBBKFM	Kingston		225A	1.60	44-17-22	302.1	133.89	51
	ON		92.9	121.0	76-28-50		82.89	CLEAR
WNTQ	Syracuse		226B	97.	42-56-48	224.9	111.47	69
APP	NY	BPH970415ID	93.1	201.0	76-01-28		42.47	CLEAR
GRANDFATHERED AT 97KW @ 201M HAAT.								

** End of separation study for channel 223A **

TOTAL P.01

TECHNICAL EXHIBIT
IN SUPPORT OF
A COMMENTS IN MM DOCKET NO. 97-179
AMENDMENT OF SECTION 73.202(b)
FM BROADCAST STATIONS
OLD FORGE AND NEWPORT VILLAGE, NEW YORK

Technical Narrative

This technical narrative and associated exhibits have been prepared on behalf of 21st Century Radio Ventures, Inc. (herein "Petitioner") in support comments being filed in response to the Federal Communications Commission Notice of Proposed Rule Making in MM Docket No. 97-179 ("Notice"). The Notice was issued in response to the Petition for Rule Making (RM-9064) filed by the Petitioner requesting the reallotment of channel 259A from Old Forge, New York to Newport Village, New York and the modification of Petitioner's construction permit (BPH-940203MC) to specify Newport Village as the station's community of license. The purpose of this technical exhibit is to demonstrate that (1) the white and gray areas located within the loss area are unpopulated and (2) that there are at least 5 other reception services available to the gain area.

White and Gray Areas Within Loss Area

Figure 1 is a copy of a map which was submitted with the technical portion of the Petition for Rule Making (and previously designated Figure 4) showing the FM 1 mV/m primary service contours for the authorized channel 259A operation at Old Forge and the proposed operation on channel 259A at Newport Village. Maximum facilities and uniform terrain were used to determine contour locations. The 1 mV/m "gain" and "loss" areas which would result from the deletion of channel 259A at Old Forge and its addition to Newport Village are also indicated. Also shown on Figure 1 are other aural (AM, FM) services available to

the areas within the 1 mV/m contours. The determination of available reception services was based on the criteria used by the FCC and set forth in footnote 5 of the Notice of Proposed Rule Making in MM Docket No. 94-61 (DA-611; adopted June 9, 1994 released July 5, 1994). For FM stations, the 1 mV/m contour is depicted based on licensed or authorized facilities or vacant allotments. For AM station WGY the 0.5 mV/m contour is shown. The AM and FM stations whose contours are shown on Figure 1 are tabulated on Figure 5. It is noted that allotment reference point for the vacant, but applied for, channel 231A allotment at Old Forge was used for this analysis as required in such an analysis.

White areas are identified by a "0" and gray areas are represented by a "1" in the loss area on Figure 1. It was set forth in the Figure 6 of the technical portion of the Petition for Rule Making that the white and gray areas were unpopulated. This determination was made using the block centroid retrieval methodology which is considered a more accurate calculation method than the uniform distribution method which appears to have been used by the FCC in the instant proceeding. This was verified by the U.S. Census Bureau.[1] Furthermore, the FCC noted in paragraph 15 of the *Report and Order* in MM Docket No. 96-120 (Grandfathered Short-Spaced FM Stations, adopted: August 4, 1997; released August 8, 1997, FCC 97-276) that "because the Census Bureau recognizes the Block Centroid Method as a more accurate calculation method, we will also accept this method." (emphasis added).

Figure 2 is a an expanded scale reproduction of Figure 1 showing the white and gray areas. Also shown are the block centroids for this area (identified by "♦").

[1] *See* the October 9, 1992 *Letter from Chief, Audio Services Division to Larry H. Will*, reference No. 1800B3-ESR.

It is apparent from Figure 2 that there are no block centroids within the white and gray area, thus, these areas are unpopulated. To further support the finding that the white and gray areas are unpopulated, they have been transferred to a USGS 1:250,000 scale topographic map included as Figure 3. As shown, the white and gray areas are located in the Adirondack Mountains within Adirondack State Park and, as a result, are unlikely to ever have any permanent residents.

Other Reception Services Available to the Gain Area

Figure 4 is a map showing the FM 1 mV/m primary service contours for the authorized channel 259A operation at Old Forge and the proposed operation on channel 259A at Newport Village, the "gain" and "loss" areas and other available reception services (AM/FM). The numbers within the gain area represent the number of available reception services. For instance, a "5" indicates that at least 5 other services are available to that area. As shown, there are at least 5 other services available to the gain area. It is noted that only those FM and AM services necessary to provide at least 5 aural services have been shown.

Coverage Contours

The FM predicted coverage contours were calculated in accordance with the provisions of Section 73.313, except that uniform terrain was presumed in all directions. Distances to WGY 0.5 mV/m contour were based on a nondirectional radiation of 2708 mV/m employed on all

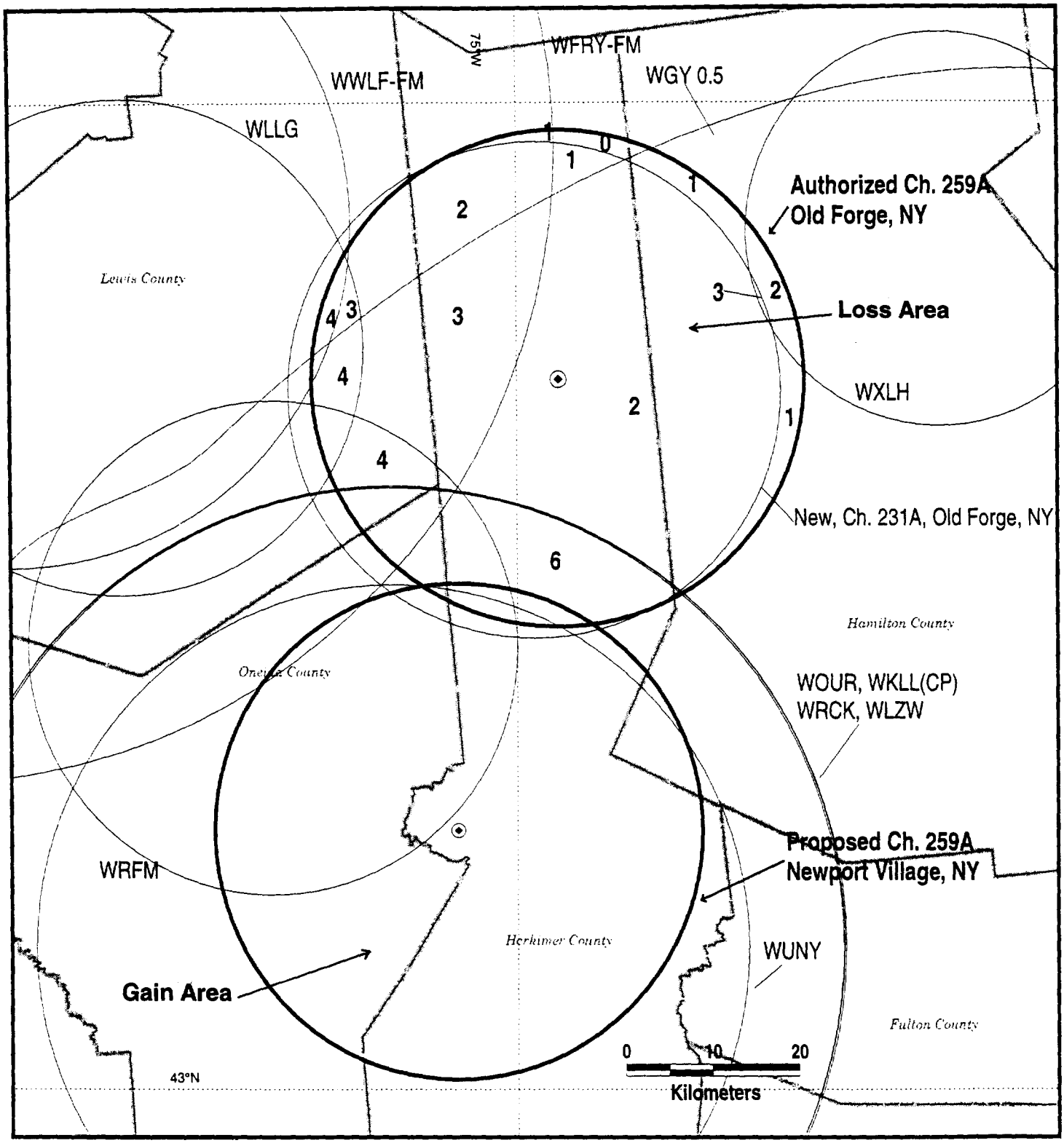
azimuths. FCC Figure M-3 conductivity employed along all azimuths.

W. Jeffrey Reynolds

du Treil, Lundin & Rackley, Inc.
240 North Washington Blvd.
Suite 700
Sarasota, Florida 34236

October 3, 1997

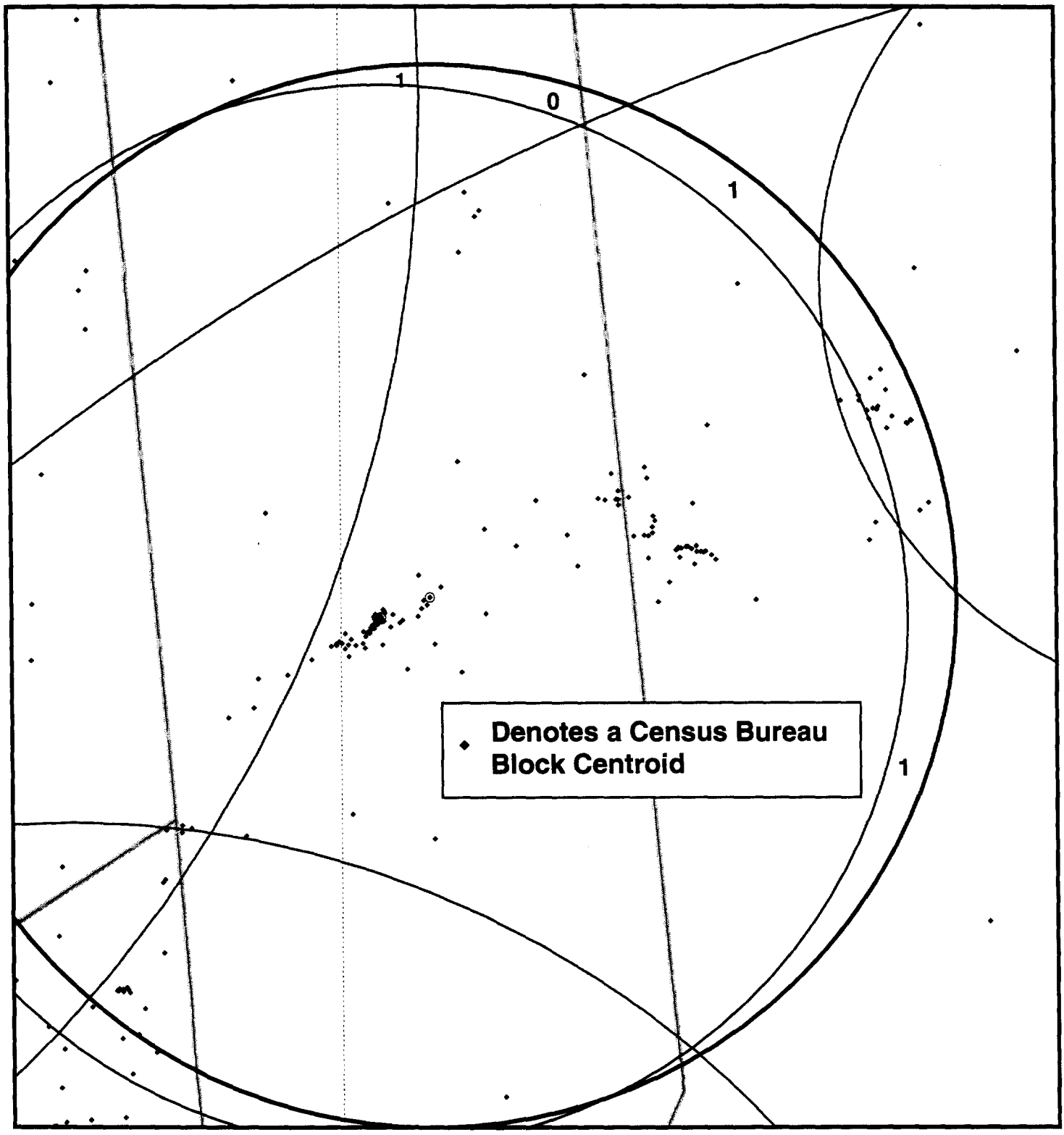
Figure 1



RECEPTION SERVICES AVAILABLE
WITHIN THE 1 MV/M PRIMARY SERVICE CONTOURS
CHANNEL 259A
NEWPORT VILLAGE, NEW YORK

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 2



US CENSUS BLOCK CENTROIDS LOCATED
WITHIN THE WHITE AND GRAY AREAS
CHANNEL 259A
NEWPORT VILLAGE, NEW YORK

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Figure 3

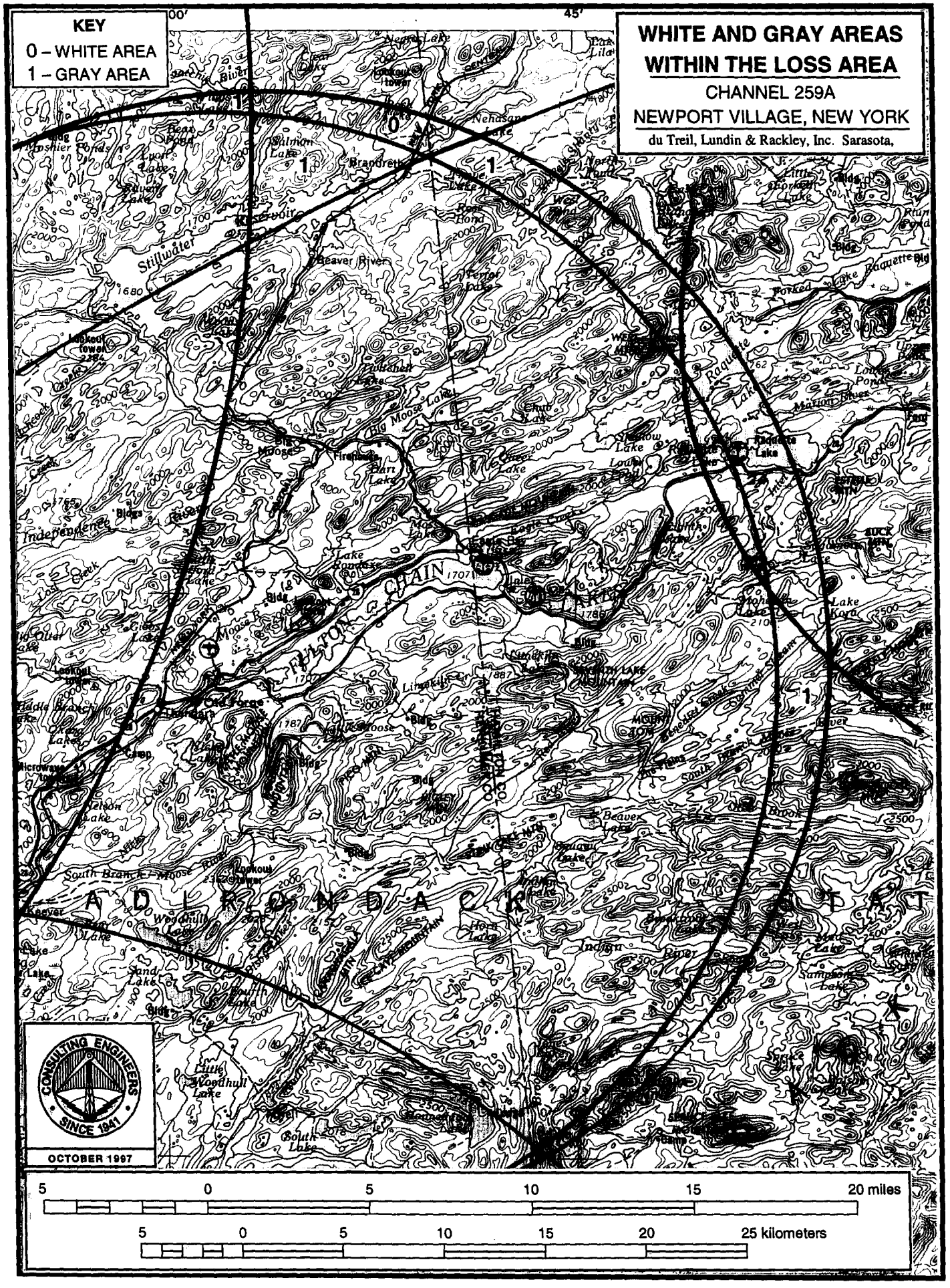
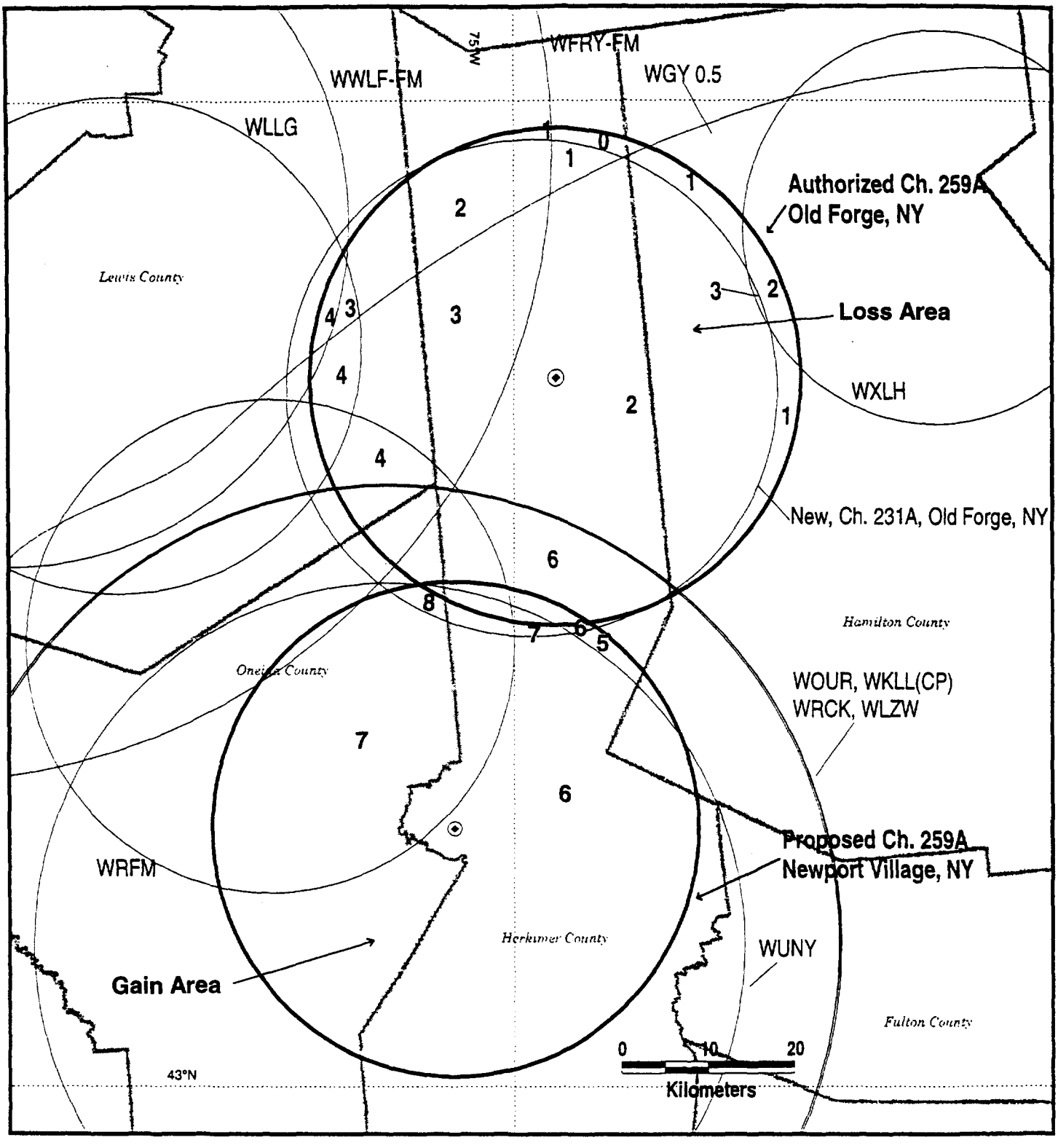

KEY
0 – WHITE AREA
1 – GRAY AREA
WHITE AND GRAY AREAS
WITHIN THE LOSS AREA
CHANNEL 259A
NEWPORT VILLAGE, NEW YORK
du Treil, Lundin & Rackley, Inc. Sarasota,
CONSULTING ENGINEERS
SINCE 1941
OCTOBER 1997
5 0 5 10 15 20 miles
5 0 5 10 15 20 25 kilometers

Figure 4



RECEPTION SERVICES AVAILABLE
WITHIN THE 1 MV/M PRIMARY SERVICE CONTOURS
CHANNEL 259A
NEWPORT VILLAGE, NEW YORK

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

TECHNICAL EXHIBIT
IN SUPPORT OF
COMMENTS IN MM DOCKET NO. 97-179
AMENDMENT OF SECTION 73.202(b)
FM BROADCAST STATIONS
OLD FORGE AND NEWPORT VILLAGE, NEW YORK

Radio Stations Considered for Available Reception Services Analysis

I. FM STATIONS - 1 MV/M Contours

Call Letters	Location	Authorized Facilities[1]
WUNY	Utica, NY	Ch. 208B, ERP 7.1 kW/HAAT 137 m
WXLH	Blue Mountain Lake, NY	Ch. 217A, ERP 0.078 kW/HAAT 527 m
WRFM	Remson, NY	Ch. 228A, ERP 6 kW/HAAT 73 m
Allotment	Old Forge, NY	Ch. 231A, ERP 6 kW/HAAT 100 m
WKLL	Frankfort, NY	Ch. 235B, ERP 34 kW/HAAT 173 m
WOUR	Utica, NY	Ch. 245B, ERP 19.5 kW/HAAt 241 m
WFRY-FM	Watertown, NY	Ch. 248C1, ERP 100 kW/HAAT 87 m
WLZW	Utica, NY	Ch. 254B, ERP 25 kW/HAAT 201 m
WLGG	Lowville, NY	Ch. 257A, ERP 1 kW/HAAT 171 m
WWLF-FM	Copenhagen, NY	Ch. 294C3, ERP 1.8 kW/HAAT 363 m
WRCK	Utica, NY	Ch. 297B, ERP 50 kW/HAAT 152 m

*Denotes noncommercial, educational FM assignment.

II. AM Stations - 0.5 mV/m Contour (Class A)

Call Letters	Location	Authorized Facilities[2]
WGY	Schenectady, NY	810 kHz, 50 kW, ND, U (Class A)

[1]Distances to FM 1 mV/m contours based on FCC's standard prediction method using maximum facilities for the class and presuming uniform terrain.
[2] Distances to WGY 0.5 mV/m contour based on a nondirectional radiation of 2708 mV/m employed on all azimuths. FCC Figure M-3 conductivity employed along all azimuths.